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Supreme Court of the United States

October Term, 1975
No. 75-1219

JAMES F. SEXTON,
Petitioner,

vs.

WILLIAM E. SIMON, *Secretary of the Treasury, et al.,*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

JAMES F. SEXTON
1021 Fidelity Building
Cleveland, Ohio 44114
Counsel for Petitioner

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DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, James F. Sexton, respectfully moves this Court for an order vacating its denial

of the petition for writ of certiorari, entered on May 19, 1976, and for an order granting the petition.

REASONS FOR GRANTING THE WRIT

1. THE FEDERAL JUDICIARY'S CONDONING THE FRAUDULENT REMOVAL OF 46 DOCUMENTS FROM AN ADMINISTRATIVE RECORD - ADDED TO DENIAL OF CERTIORARI BY THIS SUPREME COURT IN THE LIGHT OF CONCEDED JUDICIAL CONFLICT - IS INDICATIVE THAT THE FEDERAL JUDICIAL SYSTEM IS NOT FUNCTIONING AND THAT THE WRIT SHOULD BE GRANTED.

On September 16, 1970, the day petitioner filed this lawsuit, in a letter to the Civil Service Commission, he described the mentality and character of a volunteer in wartime in the parachute regiments. This country in wartime asked for petitioner's service at the risk of his life. This service he rendered. The memories are many- an encircled airborne division, a surrender ultimatum and the answer.

The war is over. All of your dreams lie ahead. This earth will become a better place. In this you will help. You will fight for justice. You will see justice. You will see a parachute in the sky.

The years are gone. You look back. Your dreams just don't come to be. There is injustice. There is arbitrary judicial decision. The judicial officers talk about correcting the system. But your experience teaches that there is merely talk because they are not concerned about arbitrary decisions.

If this petitioner were asked what the qualifications of a federal judicial officer

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were, his answer is simple. The first qualification, with very few exceptions, is that he has to be a real son of a bitch, starting with the judges of this Supreme Court. You then need not inquire further into his qualifications, judicial temperament or competence. The entire judicial system of necessity meets defeat. And where does it start. Right at the top. Right with this Supreme Court. It is unfortunate that this petitioner must use the vernacular of the street and attach the label of a son of a bitch to nine judges sitting on the highest court of the land. This petitioner therefore would be remiss in his responsibilities if he were not to state his reasons.

His first experience in this Court saw conflict between the Sixth and Seventh Circuits, which this Court failed to resolve. His second experience with the Court again developed judicial conflict. After this conflict was recognized by judicial decision, it then existed in a much litigated area for eight years before this Court finally resolved it. In both instances, this Court was not doing its job, which is to resolve judicial conflicts and establish uniformity of judicial decision throughout the Circuits.

Then there is the United States Constitution. Petitioner's experience with this Court is that this Constitution is meaningless. This Court changes it, bends it and twists it to suit its particular whims. The justification is judicial interpretation. However, when it becomes necessary to file in this Court a petition for impeachment, as was done, the status of this interpretation becomes very questionable. That this Court assumed the authority to condone the entire taking of a man's property and in so doing override the Fourth Amendment is inexcusable. When this happens, and it happened, then somebody should tell the judges participating in such a decision to

get the hell off the federal bench. Again, it is unfortunate that the vernacular of the street is necessary to reach the intelligence of the judges sitting on this Court. But if you need evidence that this is true, then you need only look to your decisions in the anti-injunction and jeopardy assessment cases. In the meantime, nine years later, there continues a veritable fiasco in the Tax Court in the jeopardy assessment case in which you overrode the Constitution by your denial of certiorari. It was this petitioner who prepared and filed the petition for impeachment. Your own language in your subsequent jeopardy assessment decisions proves that the impeachment petition was well taken.

We come now to the present case. It involves the transfer of a government employee because of his criticism of supervisory personnel and his exercise of first amendment rights. The case has an impact upon every one of 2.5 million federal employees. It is the type of case that this Court is duty-bound to hear if there is judicial conflict between circuits. By any legal definition, this transfer was adverse action and on that point of law created judicial conflict between circuits. It doesn't take much to analyse what was done. Any one of 2.5 million government employees who exercises first amendment rights and criticises his superiors is subject to a transfer at any moment merely by accusing him of creating a "strained personal relationship". Yet this Court denies certiorari. This is tyranny. This is dictatorship. This Court approves tyranny and dictatorship. Under such circumstances, every single member of this Court should be removed from the bench.

Then of course we have the "substantial evidence" rule. The Solicitor General openly admits that there is conflict between circuits respecting the "substantial evidence" rule. Now we have

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conflicts on two points of law between judicial circuits. This Court still denies certiorari. Again you are not doing your job, which is to make uniform the application of law throughout the entire country.

Next there is the matter of the 46 missing documents. The letter assigning the reasons for the transfer is missing. The documents from which it quotes are missing. There is a systematic and deliberate removal of other documents from the administrative record. The judiciary condones this. In effect, the judiciary condones fraud. It sees nothing "sinister" about fraudulent conduct. This kind of judicial attitude condones illegal activities by government and law enforcement officers. Is it any wonder that scandal of just about every kind has beset this government these past several years? Who approves this kind of conduct? The federal judiciary, of course. And this petitioner is supposed to remain silent?

The strength of this petitioner's entire case takes added perspective considering what happened in the district and appellate courts. In this regard, contempt charges lie against litigants who overstep the bounds of propriety. The bounds of propriety, of necessity, are determined by the facts and the advocacy which the case demands. Under normal circumstances, what petitioner did in this case would have been the subject of an immediate contempt charge both in the District Court and in the Court of Appeals, which brings us back to the 46 missing documents. Certainly, the district judge saw the missing documents, but only after he already had decided the case, because they then were attached to a motion to show cause why he should not be held in contempt. If what was said and done about the district judge in that motion had no basis in fact, a

contempt proceeding against this petitioner would have become mandatory. This was never done. The reason is obvious. What was said and done was entirely appropriate to the conduct of the district judge and also of the appellate court, because it was no better.

After this petitioner's experience in the Sixth Circuit with the jeopardy assessment case, he filed a motion for disqualification of all Sixth Circuit judicial officers. The reason for this action, as was stated to the Sixth Circuit, is that the federal courts, lacking in integrity, are in the beginning stages of a police state and dictatorship, which must function within the framework of political courts. If there be any doubt, you need only look to your school cases. The federal judges now are going to take over and rule by injunction. Then how soon will it be before we have the militia and martial law? By comparison, the Supreme Court of these United States now approves a government employee transfer procedure deliberately designed to silence 2.5 million federal employees. This Supreme Court once already has overthrown the Fourth Amendment by denial of certiorari. It now removes the protection of the First Amendment from 2.5 million federal employees. It decides abortion and the death penalty on the pretense of constitutional interpretation. Whatever the wisdom of such decision, this Court is the amending process, which is far beyond any concept of constitutional government in this country. It also is far beyond this Court's prerogatives.

The lawyers learn from the judges. The inferior judges learn from the judges who are superior to them. This Supreme Court does as it pleases. The inferior appellate courts soon learn to do as they please. The district judges learn quickly too. And the lawyers. What do you

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expect from them? The scandals in recent years have involved lawyers almost without exception. Where did they learn their lessons? from political courts? from the judges? from the federal judiciary? This is to do and decide as you want, without legal foundation or principle. Each judge becomes a law to himself. He takes any statute and reads it as he wants. This is not law. It is exactly the opposite. It is the beginning of tyranny; and this Court becomes the prime teacher. It has to have an influence, and it is insidious, throughout this entire government.

This document has within its four corners language that might constitute the basis for a contempt finding against petitioner, unless of course there is a defense. This Court's prior decisions have held that this petitioner is entitled to an oral hearing, if this be so, to present a defense. Petitioner can understand how the Court might want to avoid such a hearing, which would be the expedient of not following its own prior decision. This petitioner proceeds upon the assumption that this Court will observe at least once legal precedent as it applies to itself, which brings petitioner back to his September 16, 1970, letter.

In that letter, this petitioner stated that without food he would walk or limp or travel on crutches three hundred miles from this city to the capital of a nation. To do this, he stated, he would follow a legal process every step of the way; and that has and will continue to be done. This petitioner will leave this city on foot no later than September 20, 1976; and he will travel by foot without food. He expects to arrive in Washington, D. C. no later than October 3, 1976, in time for any hearing set after this Court reconvenes on October 4, 1976. Attached is a

photocopy (App., p. A1) of a newspaper article dated February 20, 1976, reporting the death of one person who practiced this technique, of which Gandhi and Cesar Chavez were adherents. In writing this document, this petitioner deliberately has burned every bridge behind him and he has no retreat. This was to be parachute. As this petitioner takes to a highway and gambles, if he loses, it was still a wonderful lifetime.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

JAMES F. SEXTON

In propria persona

CERTIFICATE OF COUNSEL

Petitioner hereby certifies that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

James F. Sexton

JAMES F. SEXTON

CERTIFICATE OF SERVICE

Petitioner certifies that on this 14th day of June, 1976, three copies of PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI were mailed to the Solicitor General, Department of Justice, Washington, D. C. 20530, on behalf of all parties required to be served.

James F. Sexton

JAMES F. SEXTON

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APPENDIX

Chicago Press Fri. Feb 20, 1976

Police convoy IRA's 'martyr'

By DONAL O'HIGGINS

DUBLIN — (UPI) — Police used a helicopter and removed the body of Irish Republican Army hunger-striker Frank Stagg today, shoving their way through a crowd of shouting, scuffling IRA supporters at Shannon Airport.

Police took the coffin out the back door of a tiny airport mortuary where it was sequested under heavy guard overnight, but members of Stagg's family and Sinn Fein, the IRA's political wing, rushed the officers.

Several fist fights broke out, but a large force of troops standing nearby did not intervene.

Authorities said there was no immediate indication where Stagg's body would be taken, but Irish government sources had said it would be delivered to Stagg's widow for burial in his native county Mayo.

The IRA said yesterday that it will go to court to recover Stagg's body to give him the coast-to-coast procession and military-style "martyr's funeral" he had requested.

An Irish government source said authorities would block "any paramilitary display of any kind."

Stagg, a convicted IRA bomber serving a 10-year jail sentence, died in a British prison Feb. 12 after 61 days without solid food.

His body was flown secretly to Ireland yesterday, but authorities suddenly ordered the plane diverted from Dublin to Shannon, setting off howls of outrage by IRA members assembled at Dublin's airport for an emotional reception.

"Body snatchers!" yelled Sinn Fein president Rory O'Brady.

CERTIORARI DENIED